IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.174 OF 1997
IN
WRIT PETTION NO.408 OF 1996

1. Oil & Natural Gas Commission
having its office at 2/4,
Vasudhara Bhavan, Bandra (E)
Bombay 400 051. .. Appellant
(Orig.Respondent No.1)

v/s.

1. The Petroleum Employees Union
being a registered trade Union
having its offie at Tel.Rasayan
Bhavan, Tilak Road, Dadar (E),
Bombay 400 014.

2. General Employees Association
being a registered trade union,
having its office at Tel.Rasayan
Tilak Road, Dadar (E),
Bombay 400 014.

3. Union of India (through the
Sectetary, Government of India,
Ministry of Labour, New Delhi.

4. The Secretary,
Central Advisory Contract Labour
Board, New Delhi.
(Notice to be served on Central
Government Advocate, Ministry of
Law & Lagal Affairs,
Ayakar Bhavan, Bombay 400 020.

5. Regional Labour Commissioner (C),
Wakefield House, Ballard Estate,
Bombay 400 038.

6. M/s.ONGC Co-op. Consumer Society Ltd.
ONGC, Uran, Raigad.

7. M/s.Asha Caterers,
ONGC, Vasundhara Bhawan,
Bandra (E), Bombay 400 051.

8. Mr.Y.Baburao,
ONGC, Andheri, Bombay 400 099.

9. Shri Shekhar N.Poojari,
C/o.ONGC T & S Office,
Calicat Street,
Bombay 400 038.

10.Shivam Caterers,
Nariman Point,
Bombay- 400 021. .. Respondents
(Orig.Petitioners No.
1 & 2 and ors.)

Mr.J.P.Cama, Senior Counsel with Mr.S.A.Bhalwal
i/by M/s.Vyas & Bhalwal for the appellant.

Mr.S.S.Pakale for the respondent No.1.

CORAM : R.M. LODHA &
D.G. KARNIK, JJ.

DATED : 29th November, 2005/
1st December, 2005

ORAL JUDGMENT (Per R.M. Lodha, J.)

Oil & Natural Gas Corporation Limited (for short 'the Corporation') is in appeal aggrieved by the order of the learned Single Judge dated January 13, 1997 whereby the Corporation has been directed to absorb the canteen workers at serial Nos.1 to 48 and 50 to 52 in Exhibit "A" annexed with the writ petition from the date of filing of the petition.

2. The Petroleum Employees Union and General Employees Association - respondent Nos.1 and 2 (for short 'the Union') filed the writ petition before this court interalia, praying for absorption and regularisation of the employees as shown in Exhibit "A" to the petition employed in the canteens in the establishment of the Corporation. The case set up by the Union in the writ petition was that the

Corporation has the canteens situated at LPG Plant, Uran, Exploration Business Offices, Priyadarshani and Andheri and Transportation and Shipping Office, Ballard Pier for the benefit of its workers. The LPG Plant, Uran is the factory under the Factories Act and the Corporation is obligated to provide canteen there under section 46 of the Factories Act. The statutory canteen at LPG Plant, Uran as well as the other canteens under reference, though are looked after by the contractors, the entire management, control and supervision is with the Corporation and the contractors are only paper agents. The Union averred that the furniture, utensils, groceries, gas equipment etc., which are necessary for running the canteen are provided by the Corporation; water and electricity bills are paid by the Corporation and the cost of the uniform supplied to the canteen workers is reimbursed by the Corporation.

3. The Corporation contested the writ petition and disputed the claim of the Union that the contract workers were the employees of the Corporation The case was set up by the Corporation that though the canteen run at LPG Plant, Uran is the statutory canteen within the meaning of section 46 of the Factories Act, however, for running the said canteen, the contractor has been appointed genuinely and the workers employed by the said

contractor are the employees of the contractor and not the employees of the Corporation. They cannot claim any absorption and regularisation in the Corporation. As regards the other canteens at Exploration Business office at Priyadarshani and Andheri and Transportation and Shipping office at Ballard Pier, the case was set up that these canteens were non-statutory canteens and that the Corporation has legal right to withdraw the said canteen facilities at any time looking to the exigencies of the business. The Corporation raised the objection that the writ petition involved serious disputed questions of fact which cannot be conveniently gone into in the extraordinary jurisdiction under Article 226 of the Constitution of India.

4. The learned Single Judge before whom the writ petition came up for consideration was of the view that the workers in the statutory canteen were entitled to absorption in view of the decision of the Supreme Court in the case of Parimal Chandra Raha and ors. v. Life Insurance Corporation of India and ors. 1995 Supp (2) SCC 611. What the learned Single Judge did was, passed an order of absorption as regards the workers engaged in the statutory canteen at LPG Plant, Uran and issued rule concerning the workers engaged in the canteens other than statutory canteen. The extent of the

order which is challenged in the present appeal reads thus: was concerned, passed the following order:-

> "By this petition under article 226 of the Constitution, two trade unions are seeking directions to the Oil & Natural Gas Commission (ONGC) for absorption of the contract workmen engaged by the corporation in canteens in various establishments of the corporation. Amongst those canteens, the canteen at the ONGC, LPG plant is admittedly a statutory canteen. The contract workmen working in the said canteen are entitled to absorption in view of the decision of the Supreme Court in Parimal Chandra Raha & ors. vz. Life Insurance Corporation of India & Ors. (1995 II CLR 194). Dr.Chandrachud brought to my notice the order passed by the Supreme Court in Special Leave to Appeal (Civil) No.10125 of 1996 dated 13th September, 1996 (Hindustan Petroleum Corporation vs. Genl.Employees' Asson. & Ors.). In that case the Supreme Court has laid down certain further conditions for absorption of such employees.
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> On going through the list of contract it is seen that the workmen listed at serial Nos.1 to 52 in Exh."A" are working in the statutory canteen, LPG plant, Panvel. Excepting one workmen, namely, Sr.No.49 who was appointed as helper in March, 1995, all other workmen are eligible even as per the condition laid down by the Supreme Court. In that view of the matter, the corporation is directed to absorb the canteen workers at serial Nos.1 to 48 and 50 to 52 from the date of filing of the petition. The arrears of differential wages from February, 1996 to be paid within six weeks from today."

5. Mr.J.P.Cama, the learned Senior Counsel for the Corporation vehemently contended that the learned Single Judge erred in directing the absorption of

the canteen workers employed by the contractor/s in the statutory canteen. He would contend that based on the decision of the Supreme Court in the case of Parimal Chandra Raha, the declaration of relationship of the employer and employee could only have been given by the learned Single Judge for the purposes of the Factories Act and not for all other purposes. He referred to the decisions in M.M.R.Khan v. Union of India, AIR 1990 SC 937; Employees in Relation to the management of Reserve Bank of India v. Workmen, (1996) 3 SCC 267; Indian Overseas Bank v. IOB Staff Canteen Workers Union, AIR 2000 SC 1508, State Bank of India and others v. State Bank of India Canteen Employees Union, (2000) 5 SCC 531 and Workmen of Nilgiri Cooperative Marketing Society Ltd. v. State of Tamil Nadu (2004) 3 SCC 514 and placed heavy reliance on the decision in Indian Petrochemicals Corporation Ltd. v. Shramik Sena (1999) 6 SCC 439 and Haldia Refinery Canteen Employees Union v. Indian Oil Corporation (2005) 11 CLR 457.

6. On the other hand, Mr.S.S.Pakale, the learned counsel for the Union would urge that while admitting the appeal, the Division Bench confined the hearing of the appeal only consider as to whether the absorption and the regularisation of the concerned workmen must be subjected to the conditions laid down in paragraphs 32, 34 and 35 of

the decision in Parimal Chandra Raha and the order in the case of Hindustan Petroleum Corporation. The learned counsel for the Union would urge that the controversy as to whether the absorption and the regularisation of the concerned workmen was only for the purposes of the Factories Act and not for all purposes, has not been kept open for consideration by the order dated 16th July, 1997. He voluntarily submitted that at this distance of time, he would not like to enter into the legal debate whether the absorption/regularisation of the concerned workers could be subjected to the conditions laid down in paragraphs 32, 34 and 35 in the case of Parimal Chandra Raha and as ordered in the case of Hindustan Petroleum Corporation; rather he accepts the conditions laid down in paragraphs 32,34 and 35 in Parimal Chandra Raha and also the directions given in the case of Hindustan Petroleum Corporation v. General Employees Association and ors. in Special Leave Petition No.10125 of 1996. Mr.S.S. Pakale submitted that the order of absorption passed by the learned Single Judge is in conformity with law laid down by the Supreme Court in the cases of Saraspur Mills Co.Ltd. v. Raman Lal Chiman Lal and others, air 1973 sc 2297; Parimal Chandra Raha (supra); VST Industries Ltd. v. VST Industries Workers Union (2001) 1 SCC 298; Steel Authority of India v. National Union Water Front Workers, AIR 2001 SC

3527; National Thermal Power Corporation Ltd. v. Karri Pothuraju and others, (2003) AIR SCW 3976 and Mishra Dhatu Nigam v. M.Venkataiah, AIR 2003 SC 3124.

7. We shall first refer to the judicial decisions cited at the bar; these are from the highest court of the land.

8. In the case of Saraspur Mills the question before the Supreme Court was whether the canteen workers employed by the Co-operative Society could be treated as employees of the Mill within the meaning of relevant provisions of Bombay Industrial Relations Act, 1946 for the purpose of payment of their wages inspite of the fact that they were employees of the Co-operative Society and were being paid wages by the society. While dealing with the said question, the Supreme Court held that section 46 of the Factories Act casts obligation on the company that runs canteen in the factory to maintain a canteen for its employees. The Co-operative Society was entrusted to run the canteen on its behalf by the company and the workers employed by the Co-operative society became the employees of the mill for the purpose of emoluments and other ancillary benefits.

9. M.M.R. Khan (and other petitioners) approached

the Supreme Court directly by filing the writ petitions where the relief claimed was that the workers working in the canteens in the establishments of railways be declared as railway employees and extended all service conditions which were available to the railway employees. The canteens were classified by the Supreme Court in three categories viz. (i) Statutory Canteens; (ii) Non-statutory Recognised Canteens and (iii) Non-statutory Non-Recognised Canteens. In relation to the Statutory Canteens, the Supreme Court held that the employees in the statutory canteens were railway employees for the purpose of Factories Act. The Supreme Court then dwelt upon the question whether the said employees were employees for all purposes and held so purely on facts peculiar to them. The three Judge Bench also held that the workers engaged in non-statutory recognised canteens in the Railway Establishments are railway employees. The third category is not relevant for the present case and hence we do not deem it necessary to deal with this case further.

10. In the case of Parimal Chandra Raha, the Supreme Court was concerned with the workers of contractor-run non-statutory recognised canteens at different offices of the Life Insurance Corporation of India in Calcutta. The question raised before the Supreme Court was whether those workers were or

should be deemed to be regular employees of the Life Insurance Corporation of India, and if yes, what pay scales and other service conditions they were entitled to. The workers claimed parity in wages with other regular employees of the Corporation. The Supreme Court referred to the large number of cases; (i) Ahmedabad Manufacturing and Calico Printing Co.Ltd. (Calico Mills) v. Workmen, (1953)2 LLJ 647; Saraspur Mills Co.Ltd. (Supra), Elphinstone Spg. and Wvg. Mills Co.Ltd. v. S.M.Sable (Bombay Textile Clerks' Union) (1953) 1 LLJ 752; Dharangadhara Chemical Works Ltd. v. State of Saurashtra, AIR 1957 SC 264; Basti Sugar Mills Ltd. v. Ram Ujagar, AIR 1964 SC 355; Hussainbhai v. Alath Factory Thezhilali Union, (1978) 4 SCC 257; Workmen v. Food Corpn. of India, (1985) 2 SCC 136; M.M.R.Khan (supra); All India Railway Institute Employees' Association v. Union of India (1990) 2 SCC 542 and Surendra Prasad Khusgal v. Chairman, M.M.T. Corpn. of India, 1994 Supp (1) SCC 87 and in the light of the afore-noticed judicial decisions and statute law culled out the legal position in paragraph 25 of the report thus-

> "(i) Whereas under the provisions of the Factories Act, it is statutorily obligatory on the employer to provide and maintain canteen for the use of his employees, the canteen becomes a part of the establishment and, therefore, the workers employed in such canteen are the employees of the management.

(ii) Where, although it is not statutorily obligatory to provide a canteen, it is otherwise an obligation on the employer to provide a canteen, the canteen becomes a part of the establishment and the workers working in the canteen, the employees of the management. The obligation to provide a canteen has to be distinguished from the obligation to provide facilities to run canteen. The canteen run pursuant to the latter obligation, does not become a part of the establishment.

(iii) The obligation to provide canteen may be explicit or implicit. Where the obligation is not explicitly accepted by or cast upon the employer either by an agreement or an award, etc., it may be inferred from the circumstances, and the provision of the canteen may be held to have become a part of the service conditions of the employees. Whether the provision for canteen services has become a part of the service conditions or not, is a question of fact to be determined on the facts and circumstances in each case.

Where to provide canteen services has become a part of the service conditions of the employees, the canteen becomes a part of the establishment and the workers in such canteen become the employees of the management.

(iv) Whether a particular facility or service has become implicitly a part of the service conditions of the employees or not, will depend, among others, on the nature of the service/facility, the contribution the service in question makes to the efficiency of the employees and the establishment, whether the service is available as a matter of right to all the employees in their capacity as employees and nothing more, the number of employees employed in the establishment and the number of employees who avail of the service, the length of time for which the service has been continuously available, the hours during which it is available, the nature and character of management, the interest taken by the employer in providing, maintaining, supervising and controlling the service, the contribution made by the management is the form of

infrastructure and funds for making the service available etc."

11. The case of Reserve Bank of India travelled to the Supreme Court through the adjudicatory path. The industrial dispute was referred for adjudication to the Industrial Tribunal as to whether 166 employees engaged in various catering establishments of the Reserve Bank of India at Bombay are the workmen of the Reserve Bank of India and if so, whether their demand for regularisation with retrospective effect was justified. The issue before the Supreme Court was whether the Tribunal on the basis of the material rightly held that 166 persons mentioned in the list attached to the reference and employed in various canteens of the Reserve Bank of India were entitled to absorption and other incidental reliefs. The Supreme Court referred to its earlier decisions and held that the ratio laid down in M.M.R.Khan was not applicable. The reasons for holding so was that the bank had only a limited role to play in the functioning of the implementation committee (canteen committee) and did not have any control on the employees engaged by the committee. It was held that there was no right in the bank to supervise and control the work done by the persons employed in the committee nor had the bank any right the manner in which the work was to be done. The bank was found to have no right to take any disciplinary action

nor direct any canteen employee to do a particular work. The Supreme Court, thus, overturned the decision of the Industrial Tribunal. The argument on behalf of the bank that the propositions (iii) and (iv) as propounded in the case of Parimal Chandra Raha required to be clarified and modified, did not find favour with the Supreme Court as it was not considered necessary to do so.

12. The three Judge Bench of the Supreme Court in the case of Indian Petrochemicals Corporation Ltd. (IPCL) adverted to earlier judgments in the case of M.M.R.Khan, Parimal Chandra Raha and Reserve Bank of India and in paragraphs 19 and 22 of the report observed thus-

> "19. Based on the above, Shri Singhvi contends that once an employee is found by this Court to be an employee of the Management because of the Factories Act, he becomes the employee of the Management for all purposes. Per contra on behalf of the Management, it is contended that a reading of the judgment in Raha case in its totality shows that what this Court intended to lay down as law was that the employees working in a statutory canteen would become employees of the Management not for all purposes but for the limited purpose of the Factories Act. It is to be noted that in Raha case this Court did not specifically hold that the deemed employment of the workers is for all purposes nor did it specifically hold that it is only for the purpose of the Factories Act. However, a reading of the judgment in its entirety makes it clear that the deemed employment is only for the purpose of the Factories Act. This Court in Raha case relied upon an earlier judgment of this Court in M.M.R. Khan v. Union of India. A three-Judge Bench of

> this Court considering the provisions of the Factories Act held that by virtue of Section 46 of the said Act the factories covered by the said Act are obligated to provide canteen services and termed such canteens as statutory canteens.....
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> .....
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> 22. If the argument of the workmen in regard to the interpretation of Raha case is to be accepted then the same would run counter to the law laid down by a larger Bench of this Court in Khan case. On this point similar is the view of another three-Judge Bench of this Court in the case of Reserve Bank of India v. Workmen. Therefore, following the judgment of this Court in the cases of Khan and R.B.I. we hold that the workmen of a statutory canteen would be the workmen of the establishment for the purpose of the Factories Act only and not for all other purposes."

13. In the case of Indian Overseas Bank, the issue before the Supreme Court was whether the 33 canteen employees of Indian Overseas Bank staff canteen were the employees of the Indian Overseas Bank. The Supreme Court referred to its earlier decisions in the case of IPCL, Reserve Bank of India, Parimal Chandra Raha and M.M.R. Khan and held in paragraphs 15, 21 and 22 of the report thus-

> "15. In Indian Petrochemicals Corporation Ltd. v. Shramik Sena, (1999) 6 SCC 439: (1999 AIR SCW 2740 : AIR 1999 SC 2577 : 1999 Lab IC 3078) the claim of workmen of statutory canteen managed by a Contractor fell for consideration and while explaining LIC case (1995 AIR SCW 2609 : AIR 1995 SC 1666 : 1995 Lab IC 2064) (supra) and following the decision in MMR Khan's case (AIR 1990 SC 937) (supra) and Reserve Bank's case (supra), it was held that the deemed employment of such workers is only for the purposes of the Factories Act and not for all purpose, because the

Factories Act, as such, does not govern the rights of employees with reference to recruitment seniority, promotion, retirement benefits etc., which invariably and otherwise are governed by other Statutes, Rules, Contracts or Policies. Consequently, it was observed, the contention of the workmen that employees of a statutory canteen ipso facto became the employees of the establishment for all purposes, cannot be accepted and the said question depended upon the further and other materials placed on record, which when cumulatively considered in that case, established the factual position that:

"(a) The canteen has been there since the inception of the appellant's factory.

(b) The workmen have been employed for long years and despite a change of contractors the workers have continued to be employed in the canteen.

(c) The premises, furniture, fixture, fuel, electricity, utensils etc. have been provided for by the appellant.

(d) The wages of the canteen workers have to be reimbursed by the appellant.

(e) The supervision and control on the canteen is exercised by the appellant through its authorised officer, as can be seen from the various clauses of the contract between the appellant and the contractor.

(f) The contractor is nothing but an agent or a manager of the appellant, who works completely under the supervision, control and directions of the appellant.

(g) The workmen have the protection of continuous employment in the establishment."

21. The decision in Indian Petrochemical's case (1999 AIR SCW 2740 : AIR 1999 SC 2577 : 1999 Lab IC 3078) (supra) does not, in our view, lay down any different criteria than those declared in the other decisions for adjudging the issue, except that it had also considered specifically the further question as to the effect of a declaration, that the

workers of a particular canteen, statutorily obligated to be run render no more than to deem them to be workers for the limited purpose of the Factories Act and not for all purposes. In the case before us, the claim is not that there was any such statutory obligation and the entire consideration proceeded only on the footing that it is a non-statutory recognised canteen falling within the second of the three categories envisaged in the earlier decisions and the Tribunal as well as the Division Bench of the High Court endeavoured to find out whether the obligation to run was explicit or implicit on the facts proved in this case.

"22. The factual findings recorded by the Tribunal and the Division Bench as also the materials relied upon therefor, have been already set out in detail, supra and it is unnecessary to refer to them in greater detail once over again. The canteen in question was being run from 1.1.73 and even before that, undisputably, the Bank itself had arranged for running of the same through a contractor and similar arrangement to run through a contractor was once against made by the Bank on its closure on 26.4.90, though after a period of some break from 21.10.92. Besides this, the nature and extent of assistance, financial and otherwise in kind, provided which have been enumerated in detail, would go to establish inevitably that the Bank has unmistakably and for reasons obvious always undertaken the obligation to provide the canteen services, though there may not be any statutory obligation and it will be too late to contend that the provision of canteen had not become a part of the service conditions of the employees. The materials placed on record also highlight the position that the Bank was always conscious of the fact that the provision and availing of canteen services by the staff are not only essential but would help to contribute for the efficiency of service by the employees of the Bank. That it was restricted to the employees only, that the subsidy rate per employee was being also provided, and the working hours and days of the canteen located in the very Bank buildings were strictly those of the Bank and the further fact that no part of the capital required

> to run the same was contributed by anybody else, either the Promoters or the staff using the canteen are factors which strengthen the claim of the workers. It was also on evidence that the canteen workers were enlisted under a welfare fund scheme of the Bank besides making them eligible for periodical medical check up by the doctors of the Bank and admitting them to the benefits of the Provident Fund Scheme. The cumulative effect of all such and other facts noticed and considered in detail provided sufficient basis for recording its findings by the Tribunal as well as the Division Bench of the High Court ultimately to sustain the claim of the workers, in this case."

Based on the facts that had come on record and the aspects noticed in paragraph 22 of the report, the Supreme Court concluded that there was direct relationship of the employer and the employee between the 33 canteen workers and the bank and did not disturb the finding of the Division Bench.

14. The issue in the State Bank of India arose out of the demand of the workers employed in the canteens run by the local implementation committees, as workmen of the Bank and for giving them the same status, pay and facilities as available to other class-IV employees of the Bank. The Supreme Court referred to its earlier decisions and after noticing the legal position summarised in Parimal Chandra Raha, it was held that in the case before them, there was no statutory or otherwise obligation of the employer to provide the canteen and, therefore, Parimal Chandra Raha was not

applicable.

15. The Supreme Court in the case of VST Industries, inter-alia, in paragraphs 9 and 10 held thus-

> "9. This Court in Indian Petrochemicals Corporation Ltd. & anr. v. Shramik Sena & Ors., [JT 1999(5) SC 339 = 1999 II CLR 634 SC], referred to the decisions in Parimal Chandra Raha's case, Reserve Bank of India v. Workman, [JT 1996(3) SC 226 = 1996 (3) SCC 267], and M.M.R. Khan v. Union of India, 1990 II CLR 261 S.C. = 1990 Supp.SCC 191, and held that the workmen of a statutory canteen, as in the present case, would be workmen of an establishment for the purposes of the Act only and not for other purposes. Thereafter, this Court further examined whether the material on record would show that the workmen are employees of the management for all purposes and adopted some of the tests as follows:
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> 1. The canteen has been there since the inception of the appellant's factory.
>
> 2. The workmen have been employed for long years and despite a change of contractors the workers have continued to be employed in the canteen.
>
> 3. The premises, furniture, fixture, fuel, electricity, utensils, etc. have been provided for by the appellant.
>
> 4. The wages of the canteen workers have to be reimbursed by the appellant.
>
> 5. The supervision and control on the canteen is exercised by the appellant through its authorised officer, as can be seen from the various clauses of the contract between the appellant and the contractor. 6. The contractor is nothing but an agent or a manager of the appellant, who works completely under the supervision, control and

directions of the appellant.

6. The workmen have the protection of continuous employment in the establishment.

10. In the present case, the findings recorded by the learned Single Judge on examination of the facts available is that there had been a canteen within the premises of the appellant up to the year 1982 and it is only from 1982 onwards the management of the canteen has been entrusted to a private contractor; that even after change of the contractor, the canteen workers have continued to be the same irrespective of the change in the contractors from time to time; that wages were paid to the workmen in the canteen by the management through the contractor; that the appellant has provided the accommodation, furniture, fuel, electricity, utensils, etc.; that the management exercises control over the standard in quality, quantity and the rate of the food items supplied to the workmen for whose benefit the canteen is established. Thus, these circumstances clearly indicate that the appellant has a complete control over the activities in respect of the canteen and the contractor has absolutely no discretion either in regard to the menu or quality and quantity of the food items much less the rate at which the same are supplied to the workmen. When the management of the appellant exercises such a complete control, the canteen shall be deemed to be run by the management itself. The appellant in any manner cannot controvert these facts."

16. In the case of Steel Authority of India before the Constitution Bench of the Supreme Court, inter-alia, the two issues were: (i) Whether the concept of automatic absorption of contract labour in the establishment of the principal employer on issuance of the abolition notification, is implied in Section 10 of the Contract Labour (Regulations and Abolition) Act, 1970 (for short "CLRA Act"); and (ii) Whether on a contractor engaging contract

labour in connection with the work entrusted to him by a principal employer, the relationship of master and servant between him (the principal employer) and the contract labour emerges. After the elaborate, extensive and detailed analysis of the precedents holding the field, the Constitution Bench summarised the legal position thus-

> "(1)(a) Before January 28, 1986, the determination of the question whether Central Government or the State Government, is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression "appropriate Government" as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry; or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company? f the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which the establishment was situated, would be the appropriate Government.
>
> (b) After the said date in view of the new definition of that expression, the answer, to the question referred to above, has to be found in Cl.(a) of S.2 of the Industrial Disputes Act; if (i) the concerned Central Government company/undertaking or any undertaking is included therein eo nomin, or (ii) any industry is carried on (a) by or under the authority of the Central Government or, (b) by railway company; or (c) by specified controlled industry, then the Central Government will be the appropriate Government otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated; will be the appropriate Government.

2(a) A Notification under S.10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government:

(1) after consulting with the Central Advisory Board or the State Advisory Board, as the case may be, and

(2) having regard to

(i) conditions of work and benefits provided for the contract labour in the establishment in question; and

(ii) other relevant factors including those mentioned in sub-section (2) of S.10

(b) inasmuch as the impugned notification issued by the Central Government on December 9,1976 does not satisfy the aforesaid requirements of S.10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on the basis of this judgment no order passes or no action taken giving effect to the said Notification on or before the date of this judgment, shall be called in question in any Tribunal or Court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3) Neither S.10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under sub-section (1) of S.10 prohibiting employment of contract labour in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment.

(4) We overrule the judgment of this Court in Air India's case (supra) prospectively and declare that any direction issued by any industrial adjudicator/any Court including High Court, for absorption of contract labour following the judgment in Air India's case (supra), shall hold good and that the same shall not be set aside,

altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification under S.10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be genuine but a mere camouflage, the so-call contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment subject to conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under S.10(1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

17. The question that cropped up before the Supreme Court in the case of National Thermal Power

Corporation Ltd. was with regard to the regularisation of the employees who were working in the statutory canteen in various capacities. The writ petition was filed by the contract workers before the Andhra Pradesh High Court seeking for a direction to the NTPC to regularise their services with attendant benefits. The learned Single Judge dismissed the writ petition. In appeal, the Division Bench set aside the order of the learned Single Judge and accepted the claim of the employees of their regularisation and absorption in the employment of the principal employer -National Thermal Power Corporation. Before the Supreme Court, on behalf of the principal employer, strong reliance was placed on the decision in the case of IPCL in support of the contention that the workers engaged in the canteen by the contractor cannot claim to be part of the establishment of National Thermal Power Corporation and cannot claim regularisation in the service. The workers, on the other hand, sought support from the decisions in the case of Indian Overseas Bank, Steel Authority of India, VST Industries and Saraspur Mills Co.

The Supreme Court held thus-

> "6. We have carefully considered the submissions of the learned counsel appearing on either side. In (1974) 3 SCC 66 (supra), this court held that where there is a statutory liability on the company concerned to run a canteen in the factory, then even though the canteen was run by a Co-operative Society, the

> employees working in the canteen would be covered by the definition of the word "employed" envisaged in Section 3(13) of the Bombay Industrial Relations Act. In (2001) 1 SCC 298 (supra) dealing with the claim of workers of a canteen run through a private contractor in pursuance of the obligation of the industrial establishment under Section 46 of the Factories Act, 1948, this Court upheld the claim of workers for being treated as the workers of the company itself. In (2001) 7 SCC 1 (supra), a Constitution Bench of this Court considered the claims of contract labourers engaged by a contractor for absorption in the establishment of the principal employer on issuance of the abolition notification under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the rules made thereunder.....
>
> 7. Consequently, we consider it to be too late in the day for the appellant, which had an obligation under the Factories Act, 1948 to run the canteen to contend to the contrary....."

18. On the date the case of National Thermal Power Corporation was decided, the same Bench decided yet another case viz., Mishra Dhatu Nigam Ltd. In that case also the Supreme Court was concerned with the issue of absorption and regularisation of the employees working in the statutory canteens run in the establishment of Mishra Dhatu Nigam Ltd. through the contractors. The Supreme Court after noticing its previous judgments in the case of Steel Authority of India, IPCL, Indian Overseas Bank, VST Industries, M.M.R.Khan and National Thermal Power Corporation held in paragraphs 8,9 and 10 of the report thus-

> "8. Heard the learned senior counsel for

the appellants and the respondents. On behalf of the appellant in C.A.No.5991 of 1997, our attention was invited to paras 125(3) to (6) and 117 in the decision reported in Steel Authority of India Ltd. and others v. National Union Waterfront Workers and others ((2001)7 SCC 1) in support of the plea against regularization of the canteen workers. For the appellant in C.A.No.6532 of 1992, our attention was invited to certain observations in the decision in Indian Petrochemicals Corporation Ltd. and another v. Shramik Sena and others ((1999)6 SCC 439); Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and another ((2000)4 SCC 245) and VST Industries Ltd. v. VST Industries Workers' Union and another ((2001)1 SCC 298) to support the claim against regularisation. The other learned counsel adopted the above submissions. On behalf of the respondents, relevant portions of the very judgments which are claimed to support the stand of the workers were brought to our notice, to contend that no interference is called for in these appeals.

9. The submissions on behalf of the appellants relying upon certain observations in the Steel Authority of India case (supra) proceed upon an erroneous assumption that the regularisation of canteen workers were being allowed and ordered on the basis of the provisions contained in the Contract Labour (Regulation and Abolition) Act, 1970 (for short "the CLRA Act"). The series of decisions commencing from M.M.R.Khan and others v. Union of India and others (1990 (Supp) SCC 191) do not lend any sustenance or credit to such a claim and, therefore, we are not persuaded to countenance the same. The relevant observations made in paragraphs 106 and 107 by the Constitution Bench in Steel Authority of India case (supra), after specifically noticing the decision reported in VST Industries case (supra), also go against any such claims.

10. Further, the decision of the Division Bench of the Andhra Pradesh High Court dated 27.11.96 in W.A.No.430 of 1996 was the subject matter of appeal in the decision in VST Industries Ltd. case (supra), which, as pointed out supra, was

noticed by the Constitution Bench which rendered the decision in Steel Authority of India Ltd.case (supra) and considered such line of cases and only to stand on a different footing than the one which was the subject-matter before the Constitution Bench, but also observed that where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of a contractor, the Courts have held that the contract labour would indeed be the employees of the principal employer and that such cases do not relate to or depend upon abolition of contract labour. so far as the decision dated 27.11.1996 of the same Division Bench rendered in Writ Appeal No.385 of 96 is concerned, the appeal filed against the same in C.A.No.5990 of 1997 (National Thermal Power Corporation Ltd. v. Karri Pothuraju and others) was considered separately and by our judgment separately delivered today has been affirmed and the appeal by the management has been dismissed. This decision also would squarely govern all these cases in favour of the workers. Consequently, we see no merit whatsoever in the submissions made to the contra by way of challenge in all these appeals, wherein the appellants concerned, indisputably are obliged to run the respective canteens in their establishments on account of the obligation cast upon them under the mandatory provisions of the Factories Act, 1948 and the Rules made thereunder."

19. In the case of Workmen of Nilgiri Cooperative Society, the Supreme Court stressed that the issue of the existence of relationship of the employer and employee between the contract workers and the principal employer is a pure question of fact and the burden to prove the said issue is on the party setting up such plea. In that case, the Tribunal opined that there did not exist any relationship of employer and employee between the society and

persons concerned. The writ petitions challenging the award of the Tribunal were dismissed by the High Court. The decision of the Tribunal as affirmed by the High Court was not interfered with by the Supreme Court.

20. In the recent case of Haldia Refinery Canteen Employees Union, the issue related to the absorption and regularisation of the statutory canteen workers engaged by the contractor. The case set up by the Union representing the contract workers was that the contract workers working in the statutory canteen run by Indian Oil Corporation through the contractor in its factory at Haldia, District Midnapore, West Bengal were the employees of Indian Oil corporation. The learned Single Judge of Calcutta High Court issued writ of mandamus and ordered absorption and regularisation of the said workers. In appeal, the Division Bench set aside the judgment of the learned Single Judge and held that the workers were neither entitled to be absorbed nor regularised in the service of Indian Oil Corporation. The Supreme Court considered its previous judgments in the case of M.M.R.Khan, Parimal Chandra Raha, IPCL and held that the factors that persuaded the Supreme Court in IPCL to take the view that workmen in that case were employees of the management were missing in the present case. It was held that in view of the

facts that had come on record, it was not possible to conclude that the contractor was nothing but an agent or manager of the Indian Oil Corporation working completely under the supervision and control of the management.

21. What is pertinent to be noticed from the survey of the afore-referred decisions is that no decision of the Supreme Court lays down as a principle of law that the workers engaged by the contractors in the establishment of the canteen which is statutorily required to be maintained by the undertaking under Section 46 of the Factories Act, 1948 have a right of automatic absorption and regularisation in the service of the principal employer. This position was not even disputed by the learned counsel for the Union. In M.M.R.Khan having held that the contract employees in the statutory canteens are railway servants, the Supreme Court went into the question whether the said employees were railway employees for all purposes and ultimately it was held that they were, purely on facts peculiar to them. One of the principles propounded by the Supreme Court in the case of Parimal Chandra Raha was that the canteens maintained under the obligatory provisions of Factories Act for the use of the employees become a part of the establishment and the workers employed in such canteens are employees of the management.

Then on facts, the Supreme Court in Parimal Chandra Raha held that the canteen had become the part of the establishment of the LIC; the canteen committees, the cooperative society of the employees and the contractors engaged from time to time are in reality the agencies of LIC and are, only a veil between the LIC and the workers. Parimal Chandra Raha came to be explained by the Supreme Court in the Indian Petrochemicals Corporation Ltd. The Supreme Court noted that in Parimal Chandra Raha, it was not held that the deemed employment of the workers was for all purposes nor was it held that it is only for the purpose of Factories Act but read that judgment as holding that the deemed employment is only for the purpose of Factories Act. Having so held, the Supreme Court went into the facts. It was found that (i) the canteen was in existence since the inception of the factory; (ii) the workers were in employment for long years and continued in employment despite change of contractors; (iii) the wages of the canteen workers were being reimbursed by the management; (iv) the management had supervision and control through its authorised officer; (v) the contractor was nothing but an agent or manager of the Corporation and (vi) the workers having protection of continuous employment in the establishment. Considering these factors cumulatively and the fact that the canteen in the

establishment of the management was statutory canteen, it was held that the workmen were, in fact, the workmen of the management. Before the Constitution Bench in Steel Authority of India Ltd., the provisions of CLRA Act come up for consideration and interpretation. ON thorough analysis of the statutory provisions and large number of decisions, the contract labours were classified in the three categories in paragraph 107. One of such categories classified by the Constitution Bench is where in discharge of a statutory obligation of maintaining canteen in an establishment the principal employer availed the services of a contractor. In this regard, it was observed that the Courts have held that the contract labour would be the employees of the principal employer. One of the arguments, as noted in paragraph 61 of the judgment, before the Constitution Bench, was that on abolition of contract labour, if the worker was not absorbed, the remedy of the abolition of the contract labour would be worse than the mischief sought to be remedied. VST Industries, IPCL and few other cases were relied upon to show that direction for absorption was given by the Court. Dealing with this aspect, the Constitution Bench in paragraph 104 observed that these cases relate to statutory canteen and stand on different footing and no principle of law can be adduced therefrom that once

the contract labour system is abolished under sub-section (1) of section 10 of CRLA Act, the contract workers have to be absorbed as regular employees by the principal employer. Then in the two later decisions viz., National Thermal Power Corporation and Mishra Dhatu Nigam Ltd., the Supreme Court held that where in discharge of a statutory obligation in maintaining the canteen in an establishment, the principal employer availed the services of the contractor, the contract labour would be the employees of the principal employer. Haldia Refinery Canteen Employees Union is the latest decision of the Supreme Court cited before us. The Supreme Court held that the factors which may persuade the court to take the view that the workers were employees of the management were missing in that case; there was no power in the management to make the appointment nor the management could take disciplinary action against the erring workers. The management was found to be not reimbursing the wages of the workers. The supervision and control of the management was also not found. The Supreme Court, accordingly, affirmed the judgment of the Division Bench of the High Court negativing the claim of the workers. We do no better than reiterate what was said in the case of Workmen of Nilgiri Cooperative Marketing Society that no decision of the Supreme Court has laid down any hard and fast rule in determining the

question whether the employees concerned are employees of the contractor or the principal employer. It is not possible as well; each case has to be answered having regard to the facts involved therein. Different tests have been applied in different cases having regard to the nature of the problem arising in the fact situation obtaining therein.

22. However, in so far as present appeal is concerned, the scope of hearing is limited.

23. The appeal has been admitted by the Division Bench on limited ground vide order dated 16th July, 1997. The order admitting the appeal reads thus-

> 1. Heard the learned counsel for the parties.
>
> 2. Admit. Appeal is admitted for a limited purpose as the learned counsel for the Appellants submits that even in the decision of the Hon'ble Supreme Court in the case of PARIMAL CHANDRA RAHA & ORS. (1995 II CLR 194) in paragraphs 32, 34 and 35, the Hon'ble Supreme Court has granted relief subject to the conditions laid down therein. Similarly it has been pointed out that in the case of HINDUSTAN PETROLEUM CORPN. vs. GENERAL EMPLOYEES ASSOCIATION & ORS. in Special Leave Petition No. 10125 of 1996, the Hon'ble Supreme Court has passed the following order:
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> > "In view of the law laid down by this Court in Parimal Chandra Raha and Ors. Vs. Life Insurance Corporation of India and Ors. 1995 Supp (2) SCC 611, there is no scope to interfere with the impugned

judgment of the High Court. We however, direct that all the workmen who are to be given the benefit of the impugned judgment of the High Court shall fulfil the following conditions:

1) At the time of initial appointment the workmen should be complying with the minimum and the maximum age limits prescribed under the policy of the Corporation;

2) They must be medically fit according to the standards prescribed by the Corporation;

3) Those who were appointed prior to the filing of the writ petition must have three years minimum service to their credit on the date of the judgment of the High Court;

4) Those who were appointed under the pendency of the writ petition, they must have four years of minimum service to their credit on the date of judgment of the High Court;

5) All those who are not absorbed in the service of the Corporation for any of the reasons indicated above, their cases shall be considered in accordance with the provisions of the Industrial Disputes Act, 1947 when fresh recruitment to the canteen staff is made by the Corporation. All the workmen who are not absorbed for any of the conditions enumerated above, shall be given retrenchment compensation in accordance with law."

3. The learned counsel for the Appellants submits that the learned Single Judge ought to have followed the aforesaid direction. As against this, learned Counsel for the Respondents vehemently submitted that the Court is required to consider the ratio laid down in Parimal Chandra Raha's case and that ratio is laid down in paragraph 27(i) as under:

> "27(i) Where, as under the provisions of the Factories Act, it is statutorily obligatory on the employer to provide and maintain canteen for the use of his employees, the canteen becomes a part of the establishment and, therefore, the workers employed in such canteen are the employees of the management."

The learned Counsel for the Respondents, therefore, submitted that the impugned order does not require any modification.

4. In our view, prima facie it appears that after laying down the aforesaid ration with regard to the appropriate relief, the Hon'ble Court has moulded the reliefs as stated in paragraphs 32, 34 and 35 of its decision. Same thing has been done in the case of HINDUSTAN PETROLEUM CORPORATION. Therefore, for deciding the aforesaid question the Appeal is admitted.

5. However, pending the hearing and final disposal of the Appeal, Respondents are directed to act as per the directions issued by the Hon'ble Supreme Court in its Order dated 22nd January, 1996 in case of HINDUSTAN PETROLEUM CORPORATION vs. GENERAL EMPLOYEES ASSOCIATION & ORS. However, it is clarified that if a workman was employed, who was under-age on the date of employment, he would be given benefit of the services from the date when he attains the minimum age prescribed under the policy of the Corporation for the time being. It is also directed that till the appeal is decided the Appellants are directed not to terminate the services of any employee except on the ground permissible under the Industrial Disputes Act, for misconduct."

23. On the face of the order dated 16th July, 1997, the only question that remains for consideration is whether while directing absorption of the contract workers, the learned Single Judge ought to have put conditions as set out in paragraphs 32,34 and 35 of the decision in Parimal Chandra Raha and as done in

the case of Hindustan Petroleum Corporation. This is the only scope of hearing of this appeal. In other words, the legality and correctness of the order directing absorption of the workers was not kept open for consideration in this appeal. The learned counsel for the respondent Nos.1 and 2 (Union) fairly conceded before us that the concerned workmen have no objection if the order of absorption granted by the learned Single Judge is moulded as per paragraphs 32,34 and 35 (paragraphs 30, 32 and 33 of SCC) of Parimal Chandra Raha and the order in the case of Hindustan Petroleum Corporation. As a matter of fact we are informed that the Corporation has absorbed and regularised the services of the concerned workers accordingly. In view of the concession of the learned counsel for the respondent Nos.1 and 2, the grievance of the Corporation raised at the time of admission of the appeal that the learned Single Judge ought to have moulded the relief of absorption as per paragraphs 32,34 and 35 in the decision of Parimal Chandra Raha and the order in the case of Hindustan Petroleum Corporation pales into insignificance and does not survive for decision.

24. Resultantly, we dispose of the appeal by the following order:

(i) The workmen who have been given

benefit in the impugned order shall fulfil the conditions as set out in paragraphs 32,34 and 35 in the case of Parimal Chandra Raha and as ordered in the case of Hindustan Petroleum Corporation v. General Employees' Association and others in Special Leave Petition No.10125 of 1996

(ii) Save and except the aforesaid modification, the impugned order passed by the learned Single Judge is maintained.

No costs.

(R.M.LODHA, J.)

(D.G.KARNIK, J.)